

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No.5238 of 2017 (O&M)
Date of Decision: 15.11.2018

IFFCO TOKIO General Insurance Co. Ltd.

..... Appellant

Versus

Vidhu Sharma and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Yogesh Gupta, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent No.1/cross-objector.

ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, appeal filed by the Insurance Company and cross-objections (XOBJC-228-CII-2017) filed by the claimant shall stand disposed of.

An interesting issue arises for consideration whether while assessing the compensation a tort-feasor can be granted benefit of his own wrong?

Late Smt. Veena Kumari wife of Tarsem Chand Sharma had died in a motor vehicular accident which took place on 15.08.2016. She was a pillion rider on a two-wheeler (scooter) driven by her son-respondent No.1 in the appeal. Learned Motor Accident Claims Tribunal has recorded

a finding that respondent No.1, her son had caused the accident, although, this aspect has been disputed by learned counsel for the Insurance Company. However, this Court does not find any reason to interfere with the aforesaid finding which is based upon appreciation of evidence available on the record and not established to be erroneous.

Scooter (two-wheeler) was owned by Tarsem Chand Sharma, her husband who is respondent No.3. In other words, the deceased was a pillion rider on a scooter driven by her son which was owned by her husband. The deceased-Veena Kumari was employed as a teacher drawing salary of Rs.74,522/-. Her husband had already retired and the son was studying at the time of accident. The claim petition was filed by the daughter who was unmarried at that time, although, aged about 28 years. Learned Motor Accident Claims Tribunal deducted 50% of the salary towards personal expenses. Learned counsel for the cross-objector has submitted that the deduction of 50% is erroneous as he had left behind at least two dependents even if the husband is not taken to be dependent. Hence, he submitted that the deduction on account of personal expenses should be 1/3rd. He further points out that on account of future prospects, 15% addition is to be made as per the Constitution Bench judgment in the case of National Insurance Company Ltd. Vs. Pranay Sethi, 2017(4) RCR (Civil), 1009.

On the other hand, learned counsel for the Insurance Company has submitted that no compensation can be awarded to a tort-feasor. He submitted that respondents No.2 and 3 i.e. son and her husband were at fault and therefore, no amount can be awarded on that account. He relied upon the judgment passed by a Coordinate Bench in the case of Oriental

Insurance Company Ltd. Vs. Smt. Premwati and another 2017(2), PLR 167

wherein it has been held while distinguishing the views of different High Courts that a tort-feasor cannot benefit from his own wrong. Para 7 is extracted as under:-

“In my opinion, both these judgments present contrary views but none of them gives any reasons which may have prevailed with the learned Judge/s for having taken that particular view. However, in both the judgments cited by the learned counsel for the respondent No.1-claimant it has been categorically accepted that the tort-feasor can not benefit from his own wrong. Even otherwise this is an obvious principle. To my mind the logical extension of this principle can only be that in a case like the present the share which the tort-feasor may otherwise have in the compensation amount would have to be deducted. In this way a judicious balance can be drawn between the two extreme views that is one of the Jammu & Kashmir High Court holding that a petition at all would not be maintainable if one of the legal representatives is a tort-feasor and the views of the Kerala High Court and the Madras High Court wherein it has been held that even though the tort-feasor himself may not be entitled to any compensation yet his share would be handed over to the other legal representative.”

Learned counsel has further pointed out that the special leave to appeal (CC No.15461 of 2016) against the aforesaid judgment has been dismissed by the Hon'ble Supreme Court vide order dated 26.08.2016.

Learned counsel for the Insurance Company has further submitted that the Motor Accident Claims Tribunal has correctly held that 50% of the amount earned by the deceased is to be deducted for personal expenses as the claimant-respondent No.1 was major, educated woman and employed, working in Aaj Smaj newspaper and therefore, she cannot be said to be dependent upon on her mother. On the other hand, learned counsel for

the claimant has submitted that there is no evidence that the daughter was earning anything or was employed. He further submitted that the husband has already retired from a non-pensionable job.

Keeping in view the evidence which has come on record, first issue which needs consideration is whether any amount can be awarded for the benefit of tort-feasor namely respondents No.2 and 3 i.e. son and husband. The answer to the aforesaid question has already been given by a Coordinate Bench with which this Court concurs. No doubt, other High Courts have taken a different view but since this Court has already considered those judgments and have laid down that the aforesaid judgments do not lay down the correct law, hence, judgments of other High Court have to be ignored.

Next issue is what should be the deduction on account of personal expenses. While considering the aspect of personal expenses, it has to be kept in mind that the deceased was major earning member of the family as the daughter was doing only a private job. The husband has also retired from non-pensionable job. In such circumstances, the cut for personal expenses applied by the Motor Accident Claims Tribunal to the extent of 50% is on the higher side and reasonable cut would be 1/3rd. On account of future prospects, the dependency would increase by 15%. Since this Court has already concluded that the claim cannot be awarded for the benefit of the tort-feasors, therefore, 50% of the amount so calculated shall stand reduced on their account.

Hence, the compensation payable is re-calculated as under:-

<i>Heads</i>	<i>Compensation awarded by MACT, Fazilka</i>	<i>Compensation awarded by High Court</i>
Income assessed	Rs.74,522/-	Rs.74,522/-
Annual income	74,522 x 12 = 8,94,264/-	74,522 x 12 = 8,94,264/-
–deduction of savings (5000 towards PF + 6000 for income tax)	11,000 x 12 = 1,32,000/-	11,000 x 12 = 1,32,000/-
Annual income after deduction	Rs.7,62,264/- (for income tax calculation purpose)	Rs.7,62,264/-
Total Income Tax 2,50,000/- exempted (2,50,000 – 5,00,000) @ 10% = 25,000 (7,62,264 – 5,00,000) Rs.2,62,264/- @ 20% = 52,452/-	Rs.77,452/-	Rs.77,452/-
Income assessed after income tax	(8,94,264 – 77,452) Rs.8,16,812/-	Rs.8,16,812/-
+ Future prospects	Nil	(15%) Rs.1,22,251/- 8,16,812 + 1,22,251 = Rs.9,39,334/-
- Deduction	(50%) 4,08,406/-	(1/3 rd) Rs.3,13,111/- 9,39,334 – 3,13,111 = Rs.6,26,223/-
Multiplier of 11 with annual dependency	4,08,406 x 9 =36,75,654/-	6,26,223 x 11 = 68,88,453
Conventional Heads i) Loss of Estate ii) Consortium iii)Funeral expenses	NIL NIL Rs.25,000/-	Rs.15,000/- Rs.40,000/- Rs.15,000/- (Rs.70,000/-)
Total Compensation awarded	Rs.37,00,654/-	Rs.69,58,453/-
50% of compensation – Compen. already awarded by MACT		Rs.34,79,226.5 (37,00,654 – 34,79,226.5) Rs.2,21,427/-

Hence, the appeal filed by the Insurance Company is allowed to the above extent whereas cross-objections filed by the claimant shall stand dismissed.

(ANIL KSHETARPAL)
JUDGE

15.11.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No